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STATEMENT OF HON. GERALD M. ZACKIOS

MINISTER OF FOREIGN AFFAIRS

REPUBLIC OF THE MARSHALL ISLANDS

BEFORE THE COMMITTEE ON RESOURCES

UNITED STATES HOUSE OF REPRESENTATIVES

UNITED STATES CONGRESS

REAUTHORIZING THE COMPACTS OF FREE ASSOCIATION
WITH MICRONESIA AND THE MARSHALL ISLANDS

July 10, 2003

On behalf of the people and the Government of the Republic of the Marshall Islands (RMI), I want to express our gratitude to this Committee for its oversight and review on behalf of the U.S. House of Representatives of agreements and proposed legislation to sustain the success of free association between our governments. The agreements that have been signed by our governments to renew expiring provisions of the Compact, and to adapt some of its provisions to our evolving alliance amid new realities, were negotiated in a spirit of friendship and respect. Consistent with the special and unique history and features of our bilateral alliance, both the RMI and U.S. negotiators have consulted regularly with the Members and staff of this and other Committees of the U.S. Congress regarding the progress of our negotiation process.

This special and unique history between our two countries extends from World War II when Marshallese scouts assisted U.S. soldiers as they advanced across the Pacific through to the testing of 67 atomic and thermonuclear warheads from 1946-1958, to the continuous provision of land and sea at Kwajalein Atoll since the 1960s and the continued cutting edge advancements made there for U.S. missile defense. Today, Marshallese citizens are serving in the U.S. Armed Forces, with many having participated in Operation Iraqi Freedom. We are proud that our citizens are serving not only because it is a Compact provision but also because we share the same ideals as the United States: the pursuit of life, liberty and happiness and our real experience in democratic governance and freedom.

The RMI Government fully supports and respectfully requests that Congress approve the negotiated agreements. My government is also seeking early approval of the agreements by the Nitijela, our national parliament. President Note and his Cabinet believe the agreements will provide the continuity and stability that is imperative in our bilateral relationship with the United States, thereby also enabling the RMI to continue, domestically and internationally, to support the political, social and economic development of our people.

As we can now see how free association has evolved over the last 17 years of the Compact, we have come to realize that the bilateral relationship that was constructed during the late 1970s and to the mid-1980s has more than survived the test of time. The agreement and relationship has evolved to changing circumstances—circumstances within the global and regional context; circumstances and priorities within the United States; and circumstances and challenges within the RMI. Some will concentrate on the weaknesses of the past years, however, the strengths and accomplishments of our relationship, and the Compact that embodies this relationship, far outweigh the weaknesses. If not, we would not be here today discussing the acceptance of amendments to the Compact.

Mr. Chairman, as you and the Committee members know, we have negotiated an agreement that adjusts the Compact to today's world and today's needs and tries to set a realistic framework for the future. The main components of this agreement are the renewal of the Compact's economic provisions that contain several new or revised elements. Most notable is the introduction of a trust fund and a more practical and

transparent accountability framework; a renewal of our mutual security and defense relations which set forth obligations that remain unprecedented in U.S. bilateral relations with any other country; revised immigration policies and procedures that address U.S. security and other concerns but maintain the right for Marshallese to live, work and learn in the United States; and, while not expiring, an amended Military Use and Operating Rights Agreement that continues the use of Kwajalein Atoll for the U.S. Army beyond 2016 with the potential to remain until 2086.

Mr. Chairman, we have painstakingly negotiated these elements with the U.S. Administration over the last 2 years. We thank U.S. Compact Negotiator Al Short and the Administration for their constant pursuit of an agreement and we thank them for their patience in working with us to address our concerns, our hopes, and our belief in the future of our relationship.

While we stand by what was negotiated, there remain several outstanding issues that the Administration could not respond to or changes that were made without consultation. My government hopes and expects that all pending issues between our nations can and will be addressed in the same spirit of trust, justice, and partnership that produced the amendments to the Compact agreements. We believe outstanding issues can be resolved positively in a way that preserves and further improves our relationship.

We do not see the Compact as a grant hand-out or a foreign aid program as the underpinning of our relationship. To the contrary, we strongly believe that we have provided and continue to provide the United States with our very limited land, our vast air space and sea area, and even our people—past, present, and future—through the historical and present security and defense relationship, including the sacrifices we have and continue to endure because of these commitments. In our view, it is a two-way relationship, a real partnership. Thus, when the Congress addresses our remaining issues, we hope that you view them in this context.

We are not asking for ‘more’ just to supplement what we negotiated with the Administration. We are asking Congress to fine tune the Compact, as amended, so that it does endure for the benefit of both parties. The RMI has not and in the future is obligated not to erode its unique security and defense commitments that include: the defense veto; third-country denial; use of air, land and sea space; and the eligibility of Marshallese to join the U.S. Armed Forces. On the other side of the equation, we hope that the U.S. commitments to the RMI on the economic, immigration and certain eligibility for Federal programs do not erode.

The unresolved pending issues include: 1) a full inflation adjustment for Compact funds so that the grant assistance and compensation provided by the Compact does not lose real value and fully compensates the RMI and its citizens for its continued support and commitments of the Compact’s provisions; 2) the continuation of Federal education programs and services that are an integral part of the RMI’s education system and, if removed, would severely injure the delivery of education in the RMI as well as limit education opportunities for Marshallese youth; 3) Congressional support to assist the repaving of the Majuro international airport so U.S. commercial air service and military access is maintained for the sole international air link for the RMI and a crucial link for the Micronesia region; 4) continued eligibility for FEMA disaster and rehabilitation assistance especially since most of our infrastructure has been and will continue to be built using Compact funding and since our low-lying atoll environment is highly susceptible to natural disasters; 5) Congressional support for a Kwajalein landowner trust fund; and 6) Congressional consideration of nuclear claims issues arising from the U.S. nuclear weapons testing program.

In reference to these issues, I am submitting with this statement several issue papers that summarize where continued agreement is required. If I may, Mr. Chairman, the following is a summary of our views on the crucial elements of these issues.

Full Inflation Adjustment

Most of the current Compact agreement’s economic assistance has a partial inflation adjustment (2/3rds of the Gross National Product Implicit Price Deflator). Since the grant assistance was only partially inflation adjusted and there were substantial step-downs (by \$4 million in 1992 and \$3 million in 1997), our economy suffered severe economic shocks during these step-downs. The economic growth and budget cuts that were expected materialized to some degree but not at the expected levels.

For the Compact, as amended, we have agreed with the Administration to have the annual grant assistance decremented by \$500,000 annually with the decremented amount being added annually to the trust fund’s

annual contribution. While this decremented amount is a large percentage of our annual grant, and grows as a proportion of the grant annually, we agreed to such a large decrement because without it, our trust fund would not be viable for the post 2023 era. In addition, we are committed to contribute \$30 million between now and FY05—this amounts to about 30 percent of our current annual budget. We consciously made a medium term sacrifice to save for future generations.

While we fully believe in the decremented approach and the reduction of our grant assistance because of this conscious sacrifice, we cannot understand why the grant assistance must lose value to inflation. Since most of our goods for our import-reliant economy are from the United States, and the U.S. dollar is the official currency of the RMI, we not only import U.S. inflation but also the added inflation-affected costs of shipping and handling.

The only answer we can come up with for the U.S. inflation policy is that the United States wishes to deflate our economy by having the funding lose its real value. The U.S. Government has not provided a reason—past or present—of why only a partial inflation adjustment is applied. We have suffered in the past for this error and we hope not to suffer again. It is, to us, ironic that the Administration has agreed to allow the distributions from the Compact trust fund (post 2023 when annual grant assistance is to end) to equal the annual grant assistance plus full inflation.

There are many statements within the U.S. government and my government about achieving “economic advancement and budgetary self-reliance” via the Compact grant assistance. Rather than deal with a generic objective, we have concentrated on budgetary self-reliance as meaning long term fiscal stability as our goal for the Compact’s economic assistance and post grant assistance era. Why? During the current Compact we have put in place the components of democratic governance and a free society. Even given our belt tightening and some economic growth, we realize that to have properly funded government functions and the related trained human resources, our fiscal situation requires an input from an outside source. We see the main source as being the Compact’s grant assistance until 2023 and the trust fund distribution thereafter.

The problem is that with the annual decrement and the loss of the grant funding to inflation, we can fill this growing funding gap in the short term but we cannot do it continuously. The gap just grows at too rapid a pace and we cannot fill it by such large increases in revenue generation or budget cuts. Thus, our request to apply the full inflation adjustment. With this minimal added amount to the grant funding and trust fund contributions we believe we can maintain fiscal stability as well as have a strengthened Compact trust fund that will insure that fiscal and economic stability will occur.

For the funding provided under the Military Use and Operating Rights Agreement (MUORA), the same argument applies with a twist: the Kwajalein landowners are providing their very limited land for use of the Ronald Reagan Missile Test Site at Kwajalein Atoll. Why should the payments under the MUORA only be partially inflation adjusted? With only a partial adjustment, the landowners are really giving the U.S. Government a rebate on their access to Kwajalein. This rebate will multiply as the new MUORA is extended to 2023 and can go as long as 2086. In effect, the longer the MUORA is extended, the more money landowners will lose in terms of the real value of the funding provided and the larger the bargain to the U.S. for access

As I have said above, the RMI commitments do not erode under the Compact and, thus, the U.S. commitments should not erode.

The Importance of Federal Education Programs and Services

Federal education programs and services have proven to be critical in educating young Marshallese and opening doors to those who go on to post-secondary education. Our country has significantly benefited from these programs and services and, I believe, the United States has benefited also. Just as an example, most of our Compact and Embassy team, as well as most of the people in my Ministry, have benefited in an extraordinary way from a U.S. Federal education program, with the most critical being the Pell Grant program. If these doors are shut, our mutual objectives for economic advancement and budget self-reliance will be severely impacted.

The importance of these programs is not only in terms of financing, but even more critically in terms of technical expertise, methods and approaches as well as access to educational institutions.

The RMI Government has made a firm and conscious decision to apply the largest portion of Compact grant assistance to the education sector. For Fiscal Years 2004-2006 about \$10 million will be aimed at the education sector annually, in addition to domestic resources and in addition to targeted infrastructure spending on education facilities. The Federal programs are identified to provide critical programs and services for which the RMI does not have the funding or capabilities, on its own, to provide. Thus, if the RMI loses its eligibility for the education program funding, the Compact funding will merely replace funding and programs once provided by the Federal education programs. These programs are in crucial areas, such as Elementary and Secondary Education, Head Start, Special Education, Bilingual Education, and Vocational Education. The elimination of the Pell Grant program would have more catastrophic impacts such as critically destabilizing the College of the Marshall Islands (a U.S. land grant institution) as well as closing higher education opportunities in the United States.

Mr. Chairman, we have sought support from the U.S. Compact Negotiator on this issue. He has kindly informed us, through a letter to the Senate Energy Committee of the Administration's position: the Compact's Title Two grant assistance was not negotiated on the basis of replacing funding for U.S. Federal programs and services.

I kindly request that we work with your committee and other related committees to continue RMI eligibility for these crucial education programs and services. If we do not have the U.S. Government's support on this issue, I believe that the Compact's emphasis placed on education by the Administration during negotiations will be lost during the new term of the Compact, as amended. We simply cannot replace what would be lost from these programs and services.

Federal Emergency Management Assistance (FEMA) Eligibility

The current Compact provides for RMI eligibility for FEMA's disaster rehabilitation and hazard mitigation assistance as well as a disaster preparedness annual grant. Under the Compact, as amended, FEMA will provide the disaster preparedness annual grant but the U.S. Agency for International Development's Office of Foreign Disaster Assistance will provide the disaster relief assistance. No hazard mitigation or rehabilitation services will be available. The U.S. will provide \$200,000 annually for a disaster relief fund under the Compact, which will assist our capacity to deal with small-scale disasters, but will certainly not help in the case of a catastrophic disaster.

FEMA program eligibility is critical for the RMI given the vulnerability of the RMI to high impact natural disasters, such as typhoons, tropical storms, wave action and drought. The RMI's natural environment is characterized by low lying atolls scattered throughout the Western Pacific ocean with an average of 6 feet above sea level, a total land area of 71 square miles, limited fresh water supplies, and remoteness from major metropolitan centers with the closest being Hawaii at 2,500 miles away.

FEMA has provided significant disaster rehabilitation and hazard mitigation assistance during the Compact's current term. Without FEMA, the RMI would be in a precarious position financially and more susceptible to natural disasters. The OFDA program is provided to all foreign countries but does not have FEMA's disaster relief and hazard mitigation programs.

Finally, we note that most of the RMI's essential infrastructure has been built with the use of U.S. grant assistance and this will continue to be the case under the new Title Two Compact provisions for public infrastructure. Given the large U.S. investment in the public infrastructure of the RMI, it follows that measures should be taken to protect these investments.

Mr. Chairman, we ask that the RMI continue to be eligible for FEMA's disaster rehabilitation and hazard mitigation assistance. There is no question that these programs have proven most critical for our country.

Majuro International Airport Repaving

The RMI has an urgent infrastructure need to repave the Majuro international airport. The U.S. Federal Aviation Administration identified this urgent need in early 2002. Since that time, the RMI has performed an engineering feasibility study and attempted to find project funding sources. The cost is estimated at \$10-12 million.

My government did look at using Compact 'bump-up' funds in FY2002 and FY2003

to fund the project. However, given our commitment for the Compact trust fund's start-up amount of \$30 million, we had to set aside most Compact FY2002 and FY2003 infrastructure and 'bump-up' funding for this Trust Fund contribution. Finding an extra \$10-12 million in a total budget of about \$100 million was not possible.

We have run out of financing options and the airport is now in danger of being shut down. Two U.S. carriers service the airport: Continental and Aloha airlines. It is also the home for Air Marshall Islands- the only airline that provides intra-RMI services. If Continental and Aloha must stop services, the RMI will be physically cut off from Hawaii and Guam and will disrupt service throughout Micronesia as well as prevent commercial flights to the Ronald Reagan Missile Test Site at Kwajalein Atoll. In addition to commercial flights, U.S. military flights land, transit and refuel in Majuro for flights to/from Kwajalein as well as for trans-Pacific flights.

Mr. Chairman, we would like to work with you and the Committee to address this immediate need. If we are not successful in finding a funding source, we will have to dip into our trust fund set-aside and, thus, we will not meet our obligation under the Compact. We do want to meet this obligation since without the RMI initial contribution, the Compact trust fund will undoubtedly be inadequate.

Extension of the Military Use and Operating Rights Agreement for Kwajalein Atoll

The RMI Government and the Kwajalein landowners will be negotiating an amended Land Use Agreement to reflect the negotiated terms and conditions of the extended MUORA, which allows the U.S. access to Kwajalein to at least 2023 with the potential to remain until 2086. The U.S. can terminate use at any time after 2023 as long as it provides a 7-year notice. The Kwajalein landowner trust fund was a proposal by the landowners to help insure an income stream once the U.S. does terminate use, especially if termination occurs between the years 2023-2030.

The trust fund initiative for the Kwajalein landowners is consistent with the MUORA and is well supported by precedent and other aspects of the RMI-U.S. relationship. Trust funds for the atolls of Rongelap, Bikini, Enewatak, Utrik and the Nuclear Claims Trust Fund, under Section 177 of the Compact, have been established by the United States to provide for the long-term economic and social benefit of RMI citizens impacted by U.S. nuclear testing.

The requested funding for the initial capitalization of the Kwajalein landowner trust fund is \$20 million. The landowners have committed to additional self-financing of the trust fund on an annual basis if this one-time appropriation is provided. If early U.S. termination were to occur, projections indicate that with a \$20 million initial capitalization, plus the landowners' contributions in addition to early termination payments by the U.S. as agreed to in the negotiated MUORA, the Kwajalein landowner trust fund corpus would reach above \$150 million in 2023, the earliest the U.S. can vacate Kwajalein. With such a corpus, the landowners will be able to replace the annual rent payments for about 10 years, which would allow a reasonable timeframe for the landowners to transition into an alternative use and/or resettlement of their lands on Kwajalein.

If, however, such a request cannot be met by the U. S. Government at this time, the RMI Government requests that Congress, at the very least, allow for the extension of the MUORA early termination clause to 2030, thereby giving assurance that the U.S. will use Kwajalein for a sufficient length of time to achieve the long-term objectives of the RMI and the Kwajalein landowners.

Such an early termination clause will not only help Kwajalein landowners but also RMI and U.S. Army long-term initiatives. For instance, the RMI and the U.S. Army, with the Federated States of Micronesia (FSM), are currently preparing a project to extend a fiber optic cable from Guam to Pohnpei, Majuro and Kwajalein (to the Ronald Reagan Missile Test Site). The benefits for the U.S. Army's operations are obvious as well as the commercial opportunities for the RMI and FSM. Such a project will surely enhance and illustrate the cooperation between the U.S., RMI and FSM. The extension of the U.S. Army's definite presence until 2030 will make this project more commercially viable.

Nuclear Claims Issues Arising from the U.S. Nuclear Weapons Testing Program

One major issue of commitment in the Compact that was not addressed during our negotiations regarding amendments to the Compact is the U.S. nuclear testing legacy and those categories of claims that remain unresolved under the terms of Section 177 of the Compact, as amended, and the Section 177 Agreement. Although Section 177 of the Compact as amended and the Section 177 Agreement remain in full force and

effect, we were informed early in our negotiations that the U.S. Compact negotiator lacked authority to deal with unresolved issues related to the effects of the U.S. nuclear testing program in the Northern Marshall Islands.

The reason given to us for this lack of authority was that the nuclear issues were under the jurisdiction of Congress by virtue of the "Changed Circumstances" provisions of Article IX of the Section 177 Agreement. The RMI Government filed a petition under this provision with the U.S. Congress in September 2000, and updated it in November, 2001.

The problem that has arisen, as the attached issue paper regarding the nuclear test legacy explains, is that the U.S. Congress has not responded to the RMI's petition for additional compensation to be provided through the political process contemplated by the settlement agreement.

Unfortunately, the issues involved are many and complex. They include government taking of private property without just compensation; important new information regarding the effects of radiation on human health; and the clean up and restoration of radiologically contaminated lands.

The RMI understands that responding to the RMI's petition for additional compensation in the political process may be difficult, which is why the RMI is proposing that the awards of the RMI Nuclear Claims Tribunal (NCT) be returned to the legal process on the basis of a limited grant of jurisdiction to review, and reject or certify the awards of the NCT, based on U.S. standards of adequate compensation.

In order to move forward, we would ask that this Committee schedule a hearing focusing on the nuclear claims issues as soon as possible. Congress had requested that the Administration review the RMI's petition over one year ago and we understand that there still is no definite date for its completion and release. Meanwhile, Marshallese who were directly exposed to the nuclear tests continue to die from serious cancers and leukemias without ever receiving full compensation for their injuries. Moreover, entire communities continue to live in exile from their homelands to this day. Confronting and resolving these issues should not be put off any longer.

Other Issues

The Administration provided my government with a copy of the amended Compact Act on June 20th, just before the amended Compact was sent to Congress. We were not provided the opportunity to address any of our concerns resulting from the Administration's unilateral changes.

In some instances, such as Section 104(b), these changes unilaterally amend the economic assistance and immigration provisions that we just concluded with the Administration. These issues have been difficult and contentious at times during our negotiations and to see the Administration making substantive changes to the Compact in this manner is wrong.

Moreover, in other instances, these changes affect the substance and intent of provisions inserted by Congress, in its wisdom, during the first Compact approval process. Below are several items we wish Congress to address by re-inserting its original Compact language.

Section 103(e)(3) makes reference to Articles X and XI of the Section 177 Agreement regarding claims, yet fails to point out actions taken by the RMI Government under Article IX of the same agreement to seek additional compensation, based on the U.S. commitment to provide adequate compensation under the terms of the claims settlement implemented pursuant to Section 177 of the Compact, as amended. Given that U.S. negotiators claimed a lack of authority to address unresolved nuclear-related concerns in Compact negotiations, the RMI Government believes it would be only fair to return to Congress's original language in this section. If the Administration wishes to advance a legal interpretation of Section 177 or provisions of the agreement implementing U.S. commitments to settle nuclear claims, the time and place to do that would be in a hearing and in legislation on the nuclear claims issue. The attempt to introduce this disputed legal interpretation into legislation approving agreements that do not address the nuclear claims issue, because the Administration refused to discuss the issues, is not a proper way to proceed.

Section 103(f)(2) should be clarified to provide that essential agricultural and food programs shall be continued to the affected atoll communities. While additional food supplement programs will be needed to support resettlement of contaminated islands once radiological clean up has progressed and safety standards have been satisfied, these nutritional programs are a moral obligation of the U.S. to ensure a

minimum level of food assistance to both dislocated and resettling populations for the foreseeable future. We doubt that anyone familiar with the hardships and living conditions of the nuclear affected peoples would dispute the need for these programs to be extended as an on-going U.S. responsibility. This legislation presents the best opportunity that may arise before the current authorization for these programs expires for Congress to extend the USDA food program for at least another five years.

Under the current Compact and its Compact Act, Congress included Compensatory Adjustments (Section 108) that were provided for Congress's revision of the tax and trade provisions of Title Two, Economic Assistance. The Congress provided, under Section 108(a) that certain commercial U.S. programs "shall be made available." The Administration has now changed the RMI's eligibility for these programs to "are authorized to be made available." The programs include: the Small Business Administration, Economic Development Administration, Rural Utilities Service (formerly the Rural Electrification Administration); the programs and services of the Department of Labor under the Workforce Investment Act of 1998; the FDIC, and the programs and services of the Department of Commerce relating to tourism and to marine resources development.

The RMI sees this as a significant downgrade of eligibility and application of these programs. Your Committee should note that the trade provisions of the amended Compact are the same, restricting RMI exports in certain products. Congress should restore its original language in the new Section 108(a) (formerly Section 111(a)) to include all of the programs listed in Section 111(a) or their successors and to require that these programs "shall be made available" as provided by Congress in the original Compact Act.

This comment also relates to the amended Compact's Section 108(b). In the current Compact Act, the Congress allowed up to \$20 million to be authorized for compensation for any adverse impact of the Compact's tax and trade provisions. The RMI did apply for this compensation but the request did not pass the Administration's review. As you can imagine by reading the section, it is extremely difficult to prove such a negative impact. The result is that no funds have been disbursed to the RMI or FSM under this Compact provision.

The amended Compact Act sets a time limit to submit such an impact report or request by September 30, 2004 and for impacts only suffered from 1987-2003. We do not think this just. If the trade provisions were improved, we would understand, but, they are not.

Mr. Chairman, we ask that your committee review this provision so that: 1) impact can be claimed for the new Compact term, if appropriate; 2) that the deadline for submission for any such claim be submitted by September 30, 2023, the end of the amended Compact's Title Two; and 3) transparent guidelines and an evaluation process and requirements are defined so that it is something practical, not a nebulous, subjective process.

Conclusion

Last, Mr. Chairman, I would like to comment on the accountability mechanisms negotiated for the amended Compact's term, and thereafter in regard to the Compact trust fund. We stand by and fully support the Fiscal Procedures and the Trust Fund Agreements. We firmly believe just as the U.S. government must be accountable to its taxpayers for Compact funds, my government must be accountable to its citizens for spending Compact funds and our own resources.

In fact, Mr. Chairman, we initiated steps on our own last year during our budget process and have begun allocating Compact assistance in the key sectors. The priorities are clear in our Medium Term Budget and Investment Framework. These are education, infrastructure development and maintenance, health and environment. We are currently working closely with the U.S. Department of Interior in applying the Fiscal Procedures Agreement and we welcome their support and cooperation.

My only word of caution is that what we are developing is a new budget and fiscal management system that resounds throughout our public service. As in the United States, applying performance-based budgeting and other requirements at a federal, state or local level does not occur overnight. We are instituting a step-by-step process. I hope both sides have patience as well as perseverance. We need assistance and support to help us apply these new requirements, not people looking over our shoulder and pointing fingers. With the cooperation we have received so far, my government is encouraged, progress is being made, and we feel we are doing it right.

Mr. Chairman, I realize our issues, together, may sound overwhelming to you and other Committee members. I believe that, together, we can address these issues in a timely manner. As I have said early on in my statement, we have come a long way in our relationship. The issues identified are to move our relationship forward so we both step into the future together and that we have an enduring Compact that serves both our needs while giving us both the tools to meet our obligations.

Mr. Chairman, after departing Washington, I will return to Majuro where I look forward to presenting the Compact, as amended, to our legislature, the Nitijela. The sooner we can come to agreement on the above issues, the faster we can have the amended Compact passed through our legislative process.

I look forward to working with you and your staff so our common interests are achieved.

Kommol Tata.